



CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2016-29

A BY-LAW FOR THE LICENSING AND REGULATING OUTDOOR SERVING AREAS (Outdoor Serving Area By-law)

WHEREAS of the *Municipal Act, 2001, S.O. 2001c. 25* (the "Act") Section 11 (3) permits a council of a local municipality to enact by-laws respecting business licensing;

AND WHEREAS Section 151(1) of the Act authorizes a council to license, regulate and govern any business wholly or partly carried on with the municipality even if the business wholly or partly carried on with the municipality even if the business is being carried on from location outside the municipality;

1. **DEFINITIONS**

The following words shall have the following meaning in this By-law:

"AMPLIFIED" noise shall mean any sound which is enhanced electronically or by other means;

"APPEAL COMMITTEE" means the Appeal Committee established by the Town;

"APPLICANT" means a person applying for a license, under this by-law;

"DIRECTOR" means the Director, Legislative Services of the Town or authorized designate;

"LICENCE" means authorization under this By-law to carry on the trade or business specified therein;

"LICENCEE" means a *Person* licensed under this By-law;

"OUTDOOR SERVING AREA" means any area on private property which is licensed to serve alcohol and is used by a business for the serving or consumption of food, beverages or refreshments which is not enclosed within a building structure or is exposed to the outdoors;

"OPAQUE BARRIER" shall mean a barrier which does not permit the transmission of light through its structure;

"OWNER" means a person who alone or with others has the right to possess or occupy an *Outdoor Serving Area* and includes a lessee of an *Outdoor Serving Area* or a premises on which an *Outdoor Serving Area* is located;

"OPERATOR" means a person who alone or with others operates, manages, supervises, runs or controls an *Outdoor Serving Area*;

"PERSON" includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;

"TRANSLUCENT" barrier shall mean a barrier which will permit the transmission of light through its structure.

“TOWN” means the Corporation of the Town of Newmarket in the Regional Municipality of York.

2. GENERAL

- 2.1 No *person* shall own or operate an *Outdoor Serving Area* in the Town without obtaining a *Licence* each year in accordance with the provisions of this By-law.
- 2.2 Any *Licence* issued under this By-law shall expire on December 31 in the year it is issued, with the exception of those licences issued in Section 6.
- 2.3 No *Person* shall enjoy a vested right in the continuance of a *Licence* and the value of a *Licence* shall be the property of the Town and shall remain so irrespective of the issue, renewal or evocation thereof.
- 2.4 No *Licence* shall be transferred and if an owner sells, leases or otherwise disposes of his or her *Outdoor Serving Area* or the premises or part thereof upon or in which the *Outdoor Serving Area* is operated, to any *Person*, his or her *Licence* in respect of such *Outdoor Serving Area* shall, notwithstanding any other provision of this By-law, be revoked.

3. APPLICATION

- 3.1 Every *Applicant* for a *Licence* to operate an *Outdoor Serving Area* shall complete the application prescribed and shall furnish such information as the *Director* may prescribe.
- 3.2 Prior to obtaining a *Licence* for an *Outdoor Serving Area*, every *Applicant* shall submit the application fee outlined in the Town's Fees and Charges By-law.
- 3.3 The *Applicant* shall provide to the *Director* at the time of application, a copy of the Liquor Licence issued to the *Applicant* by the Alcohol and Gaming Commission.
- 3.4 Without limiting the generality of any other provisions of the By-law, every application for a *Licence* for an *Outdoor Serving Area* may be submitted to, the Alcohol and Gaming Control Commission, the Fire Department, the Planning Department, the Building Department, the Operations Department and any other government official or functionary for a report and where any such report is negative or unfavourable to the *Applicant* and, in the opinion of the *Director*, shows adequate reason why a license should not be granted, the *Applicant* shall be furnished with a copy of such report and shall have the right to appear before the *Appeal Committee* to show cause why his or her application should be granted.
- 3.5 Every *person* applying for an *Outdoor Serving Area Licence* shall file with the *Director*, documentation satisfactory to the *Director* demonstrating the *Applicant's* right to possess or occupy the premises to be used by him as an *Outdoor Serving Area*, and if such person is not the registered *owner* of the property on which the *Outdoor Serving Area* is to be located, the *Applicant* shall file with the *Director* a copy of his or her lease, if any, and a copy of any other document constituting or affecting the legal relationship between said *Applicant* and the registered *owner* and a letter from the registered owner granting permission for the application for an *Outdoor Serving Area* license.

4. OPERATING REGULATIONS

- 4.1 No *Person* who is the owner or operator of an *Outdoor Serving Area* shall permit the *Outdoor Serving Area* to operate without a *Licence*.

4.2 No *Owner* or *Operator* shall operate or permit the occupancy of any *Outdoor Serving Area* on any property, which is located within 200 feet of any lands zoned to permit residential use between the hours of 1:00 am and 11:00 am on the following day.

4.3 Every owner and operator shall at all times post in all *Outdoor Serving Areas* in a location which is visible to all patrons a notice provided by the *Town* outlining all the municipal regulations with respect to the operation of *Outdoor Serving Areas* and notifying the patrons of the provisions of the noise By-law which come into effect at 11:00 pm.

5. OUTDOOR SERVING AREA REQUIREMENTS

5.1 Subject to Section 6 of this By-law, no person shall operate an *Outdoor Serving Area* which is located within 40 feet of the property line of an adjacent residential property or road allowance unless the *Outdoor Serving Area* is separated from the adjacent residential property or road allowance by a solid translucent or *Opaque Barrier* of a minimum of six feet in height along its perimeter for the purpose of noise reduction and security.

5.2 Any person who owns or operates an *Outdoor Serving Area* which is illuminated and is in an area adjacent to a residential or multi-residential (RM) zone or a residential use, shall arrange, design and install the lighting fixtures to deflect the light down and away from adjacent residential buildings, lots and streets.

6. OUTDOOR SERVING AREA – MAIN STREET

6.1 No person shall operate or maintain an *Outdoor Serving Area* on municipal property on Main Street between Millard Ave and Water Street without first having obtained a *Licence* to do so.

6.2 All *Applicants* for an *Outdoor Serving Area* in this Section of the By-law must comply with all application requirements and conditions.

6.4 *Licences* issued in this Section of the By-law shall be issued between the months of April through to the month of October with specific dates to be identified in the Applications.

7. GROUNDS FOR REFUSAL TO ISSUE A LICENCE OR TO REVOKE

7.1 The *Director* shall refuse to issue a *Licence* where the *Applicant* would not be entitled to a *Licence* for reasons set out in this By-law.

7.2 An *Applicant* is entitled to be licensed except where:

- a) The past conduct of the *Applicant* affords reasonable grounds for the belief that the *Applicant* will not carry on the activity for which he is to be licensed in accordance with the law and with integrity and honesty; or
- b) The *Applicant* is carrying on activities that are or will be, in contravention of this By-law and any other municipal by-law or other applicable law; or
- c) The past or present conduct of the *Applicant*, or of any partner, in the case of an applicant which is a partnership, or of any director or officer of the corporation, if the applicant is a corporation, affords reasonable grounds to believe that the business in respect of which the application is made will not be carried on in accordance with the law and with integrity and honesty, or
- d) The *Applicant* has failed to pay a fine or fines imposed by a court as a sentence arising from convictions for breach of a by-law enacted by the *Town*; or

- e) There are reasonable grounds to believe that the equipment, vehicles and other personal property used in connection with the carrying on of or engaging in the business licensed hereunder is dangerous or unsafe; or
- f) The fee payable in respect of the license applied for has not been paid.

8. POWER TO REVOKE OR SUSPEND A LICENCE

- 8.1 The *Director* may revoke or suspend a *Licence* where this *Licensee* fails to comply with any of the provisions of this By-law.
- 8.2 A *Licence* may be revoked or suspended when:
 - a) the *Applicant* has been convicted of an offence under this By-law;
 - b) in the opinion of the *Director* the conduct of the *Applicant*, during the period in which the *Licence* is effective affords reasonable grounds for belief that the *Applicant* has not, is not, or will not carry on the operation of the *Outdoor Serving Area* in accordance with this By-law and any other applicable law;
 - c) the *Applicant* has provided false or misleading information in respect of the *Licence* application; or
 - d) in the opinion of the *Director*, the premise in which the *Applicant* intends to operate an *Outdoor Serving Area*
 - e) does not comply with provisions of this By-law or any other applicable law.

9. PROCEDURE WHEN LICENCE REVOKED, SUSPENDED OR REFUSE TO ISSUE

- 9.1 When, for any of the grounds set out in the applicable section of this By-law, an *Applicant* or *Licensee* is not entitled to be licensed or a *Licence* may be subject to revocation, the *Director* shall refuse to issue the *Licence*, suspend or revoke the *Licence*, or issue a *Licence* subject to terms and conditions.
- 9.2 The *Director* shall provide written notice to be given to the *Applicant*,
 - a) setting out the grounds for the revocation, refusal to issue, suspension or the terms and conditions of a *Licence*;
 - b) give reasonable particulars of the grounds;
 - c) be signed by the *Director*;
 - d) inform the *Applicant* or *Licensee* of his/her right to a hearing before an *Appeal Committee* appointed by *Council* if he delivers a written request for such a hearing within seven (7) days following the date of service.
- 9.3 On receipt of a written request for a hearing from an *Applicant* or a *Licensee*, the *Director* shall schedule the hearing and shall give the *Applicant* or *Licensee* reasonable written notice of the date, time and place of the hearing.

- 9.4 The *Director* shall make a recommendation to the *Appeal Committee* with respect to revocation, suspension, cancellation or refusal or issue a *Licence* or recommend that a *Licence* be issued subject to terms and conditions.
- 9.5 When an *Applicant* or *Licensee* who has been given written notice of the hearing does not attend at the appointed time and place, the *Appeal Committee* may proceed with the hearing in their absence and the *Applicant* or *Licensee* shall not be entitled to any further notice of the proceedings.
- 9.6 Upon final decision of the *Appeal Committee* the *Director* shall send by either personal delivery or registered mail, a written notice of the *Appeals Committee* decision.
- 9.7 The decision of the *Appeal Committee* is final binding.
- 9.8 A *Licensee* who's *Licence* has been revoked or suspended shall return the *Licence* and documentation issued by the *Director* within twenty-four (24) hours of the service of notice of revocation. An Inspector may enter upon the business premises of the *Licensee* for the purpose of receiving, taking or removing the said *Licence*.
- 9.9 No *Person* who's *Licence* has been revoked or suspended shall refuse to deliver the *Licence* to the *Director* in any way obstruct or prevent the *Director* from receiving or taking the same.
- 9.10 Notwithstanding any decision of or statement by *Appeal Committee* respecting the granting of a *Licence* or application therefore, no *Person* shall be deemed to be licensed until the *Applicant* has paid the required fee and has received the physical *Licence*.

10. **NOTIFICATION OF CHANGE OF INFORMATION**

- 10.1 When a *Licensee* changes his name, address, or any information relating to the *Licence*, the *Licensee* shall notify the *Director* within seven (7) business days after the change, of information relating to the *Licence* and shall if required by the *Director* return the *Licence* immediately to the *Director* for amendment.

11. **ORDER**

- 11.1 Where the *Town* is satisfied that a contravention of this By-law has occurred, the *Town* may make an order requiring the *Owner* to do work to correct the contravention.
- 11.2 An order under Section 11 of this By-law shall set out:
- a) reasonable particulars to identify the contravention, the location of the contravention and the date by which the *Licensee* must be brought into compliance with this By-law;
 - b) that the *Licensee* shall comply with all contraventions identified on the order within forty-eight (48) hours of the order being served;
 - c) an order under Section 11 may require work to be done even though the facts which constitute the contravention of this By-law were present before this By-law came into force; and

- d) any *Person* who contravenes an order under Section 11 of this By-law is guilty of an offence.

12. **SERVE OF NOTICES OR ORDERS**

- 12.1 Any notices or orders required to be given pursuant to this By-law by the *Director* shall be deemed to be sufficiently served if delivered personally or sent by registered mail or by prepaid first class mail addressed to the *Person* to whom service is to be made at the address on the application or the last known address on file in the Legislative Services Department.
- 12.2 Any notices or orders served by either registered mail or by prepaid first class mail shall be deemed to have been received on the fifth (5) day following the mailing of the notice or order.

13. **INSPECTIONS AND POWER OF ENTRY**

- 13.1 No *Person* shall hinder or obstruct, or attempt to hinder or obstruct, any *Officer* who is exercising a power or performing a duty under this By-law.
- 13.2 An *Officer* may enter on Land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with this By-law:
 - a) the provisions of this By-law;
 - b) an order issued under this By-law; or
 - c) an order made under section 431 of the Act.
- 13.3 Where an inspection is conducted by an *Officer*, the person conducting the inspection may:
 - a) require the production for inspection of documents or things relevant to the inspection;
 - b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c) require information from any *Person* concerning a matter related to the inspection; and
 - d) alone or in conjunction with a *Person* possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 13.4 The Town may undertake an inspection pursuant to an order issued under Section 438 of the *Act*.
- 13.5 The *Town's* power of entry may be exercised by an *Officer* as well by any *Person* under his or her direction.

14. **OFFENCE**

- 14.1 Every *Person* who contravenes a provision of this By-law, including an order issued under this By-law, is guilty of an offence and, upon conviction, is liable to a fine as provided for in the *Provincial Offences Act*.
- 14.2 If there is a contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be designated as a continuing offence for each day or part of a day that the contravention remains uncorrected.

- 14.3 If an order has been issued under this By-law, and the order has not been complied with, the contravention of the order shall be designated as a continuing offence for each day or part of a day that the order is not complied with.
- 14.4 For purposes of this By-law, if there is an offence respecting two or more acts or omissions, each of which separately constitutes an offence and is a contravention of the same provision of this By-law, then the offence is designated as a multiple offence.
- 14.5 For purposes of this By-law, an offence is a second or subsequent offence if the act giving rise to the offence occurred after a conviction had been entered for the same offence at an earlier date.

15. PENALTY

- 15.1 Every *Person* who is guilty of an offence under this By-law on conviction is liable to the following penalties:
- a) Upon a first conviction, the minimum fine shall be \$350.00 and the maximum fine shall be \$100,000.00;
 - b) Upon a second or any subsequent conviction, the minimum fine shall be \$500.00 and the maximum fine shall be \$100,000.00;
 - c) Upon conviction for a continuing offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00 for each day or part of a day that the offence continues; and
 - d) Upon conviction for a multiple offence, for each offence included in the multiple offences, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00.

17. LIABILITY

In addition to any other party who commits the offence with respect to the outdoor serving area by-law, the owner of the premises on which the outdoor serving area was constructed, erected, installed, or maintained shall be deemed to commit the offence.

18. SEVERABILITY

- 18.1 Where a Court of competent jurisdiction declares any section or part of a section of this By-law invalid, the remainder of this By-law shall continue in force unless the Court makes an order to the contrary.

19. **SHORT TITLE**

This By-law shall be referred to as the “Outdoor Serving Area By-law”;
AND THAT Schedule 16 of By-law 2001-156 be hereby repealed.

ENACTED THIS 7TH DAY OF JUNE , 2016.

Tony Van Bynen, Mayor

Andrew Brouwer, Town Clerk